



Informal Hearing Determination

Company: Barnette Energy, LLC **Permit No.:** 1101978

Subject: Cessation Order No. HNM0004964,
Violations 1, 2, and 3 of 3

Conference: July 10, 2012 10:00 a.m. **Location:** Mine site

Participants: Kathy Sevilla (Business Manager), Roger Layne (Superintendent), Heather McDonald-Taylor (Inspector)

Summary of Informal Hearing

An informal hearing was conducted on July 10, 2012 at the mine site of Barnette Energy 10:00 AM. This informal hearing was to address the issuance of Cessation Order No. HNM0004964 (violations 1, 2, and 3 of 3). Present at the hearing were DMME personnel Area Inspector Heather McDonald-Taylor. Representing the company at the hearing were Kathy Sevilla and Roger Layne. No other members of the public attended this hearing.

Cessation Order No. HNM0004964, (violation 1 of 3 was issued for failure to abate Notice of Violation No. HNM0003670 violation 2 of 5). NOV HNM0003670 (violation 2 of 5) was issued to the permittee because operations were conducted outside the permit areas.

Cessation Order No. HNM0004964 violation 2 of 3 was issued for failure to abate Notice of Violation No. HNM0003670 violation 3 of 5). NOV HNM0003670 (violation 3 of 5) was issued to the permittee because material during the operation was placed on the down slope. Material was placed below the lowest coal seam approved to be mined in the immediate area of dwelling # 64. Material was placed on the Upper Banner Seam level.

Cessation Order No. HNM0004964 violation 3 of 3 was issued for failure to abate Notice of Violation No. HNM0003670 violation 5 of 5. NOV HNM0003670 (violation 5 of 5) was issued to the permittee because the permittee had failed to pass drainage from the disturbance adjacent to dwelling #64 to an approved sediment structure.

Mr. Layne and Ms. Sevilla spoke on behalf of the company, and addressed all the violations in a blanket statement. Ms. Sevilla noted that they had submitted a revision that would have corrected the unabated violations. The revision was delayed in being approved because the engineer in charge of the revision was not prompt in re-submitting the corrections. The company was not aware of the delays and was making every effort to seek approval of the revision. Payment to the engineer was a factor in the slow response of the engineer to work on the revision. The company thought the revision was being worked on when in fact it wasn't. Mr. Layne noted that even with approval, it would be difficult to work with the landowner to

complete the necessary work near the landowner's home. He also noted that a lack of equipment had hampered efforts to complete much of the work on the permit.

Informal Hearing Recommendation

A portion of the informal hearing was spent explaining the enforcement processes to the representatives of Barnette Energy LLC. This included the issuance of notices of violation as well as cessation orders and the accompanying civil penalties. Also addressed were the alternative actions of permit suspension and revocation, and the rights of formal review of this informal hearing decision.

Cessation Orders for failure to abate are addressed in Section 4VAC-25-130-843.11(b) (1) of the Virginia Coal Surface Mining Reclamation Regulations. Specifically, the regulation states,

“When a notice of violation has been issued under 4VAC25-130-843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Director shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.”

The operator did enter into a settlement agreement to resolve the issue of the outstanding notices of violation. Item 3.d of the approved settlement agreement references a revision to address the violations associated with Cessation Order No. HNM0004964. Item 3.d of the approved settlement agreement specifies that,

“Barnette Energy shall diligently pursue approval of this revision and meet all re-submittal deadlines set by the DMME.”

Cessation Order No. HNM0004964, violations 1 through 3 of 3, were issued because the operator failed to re-submit the revision application 1007198 in a timely manner in that re-submittal of the revision response to DMLR comments did not meet the re-submittal deadlines in the comment letters associated with the revision. Indeed, the revision application 1007198 under review 5 had a re-submitted date of April 23, 2012 but was not re-submitted to the Division until the Cessation Orders were issued.

One of the criteria for extension of a notice of violation beyond 90 days is diligent pursuit of approval of a revision to address the violation. Since the operator did not diligently pursue approval of revision application 1007198, there were no grounds for granting an extension of the original Notices of Violation under HNM0003670. Under Section 4VAC25-130-843.11(b) (1) of the Virginia Coal Surface Mining Reclamation Regulations, a cessation order must be issued for each Notice of violation not complied with.

The issuance of Cessation Order No. HNM0004964, violations 1, 2, and 3 of 3, for failure to abate the referenced violations of NOV# HNM0003670 are hereby affirmed.

Conference Officer: _____
Harve A Mooney , Conference Officer

Date: _____

